

## Introduction

The Finance Act, 2020 introduced a digital service tax (**DST**) to be paid on income earned from the provision of services through a digital market place in Kenya from January 1<sup>st</sup>, 2021. A digital market place is a platform that enables the interaction between buyers and sellers of goods and services through electronic means.

DST is chargeable at the rate of 1.5% of the gross transaction value as an advance tax and should be set-off against the tax payable for the year of income.

## Services subject to DST

DST is applicable on the following digital services:

- ❑ streaming and downloadable services of digital content e.g. movies, music, games, e-books;
- ❑ transmission of data collected about users' activities on a digital marketplace;
- ❑ provision of a digital marketplace, including websites, online applications, that link buyers and sellers;
- ❑ subscription-based media, including news, magazines and journals;
- ❑ electronic data management, including web hosting, online data warehousing, cloud storage services;
- ❑ supply of search-engine and automated helpdesk services;
- ❑ tickets bought for live events, including theatres, restaurants, purchased through the internet;
- ❑ online teaching via pre-recorded medium or eLearning; and
- ❑ any other service provided or delivered through an online digital or electronic platform.

## Exemptions form DST

Online services of a licensed financial service provider which facilitate payments, lending, or trading of financial instruments, commodities or foreign exchange and services whose payment is subject to withholding tax are exempt from DST.

## Place of supply

DST is applicable if the digital service is provided to a user who is located in Kenya. A user of a digital service is deemed to be located in Kenya if:

- ❑ the user accesses a digital interface from a terminal located in Kenya, such as a computer or phone;
- ❑ payment for the digital services is made using a credit or debit facility provided by a financial institution or company in Kenya;

- ❑ digital services are acquired using an internet protocol address registered in Kenya or an international mobile phone country code assigned to Kenya; or
- ❑ the user has business, residential or billing address in Kenya.

## Tax base

DST is chargeable on the gross payment (excluding Value Added Tax) received as consideration for the services or the commission or fee paid for the use of a digital platform.

## Accounting for DST

DST is payable by the digital service provider or any person that collects the payments and is due at the time of the transfer of the payment to the service provider.

Non-resident persons without a permanent establishment (PE) in Kenya is required to appoint a tax representative who should account and remit the tax due to the Commissioner by the 20<sup>th</sup> day of the month following the end of the month that the digital service was offered.

The Commissioner can also appoint persons as tax representative for resident persons, non –resident persons with a PE in Kenya and non-residents who fail to appoint tax representatives.

## DST Return

A digital service provider is required to submit a return indicating the value of transactions and the tax remitted by the 20<sup>th</sup> day of the month following the end of the month that the digital service was offered. DST Records should be kept for a period of 5 years.

## DST Return Penalty for Non-compliance

A person who fails to comply with the provisions of the DST is liable to the normal tax penalties under the Tax Procedures Act with the risk of being restricted from accessing the digital marketplace in Kenya.

## Conclusion

Introduction of DST is an acknowledgement of the growth of the digital market in Kenya that is expected to even grow further in the wake of the current pandemic which has reduced physical interaction. It will, however, be an uphill task to implement DST due to the nature of digital transactions.

**This Tax Alert is for your information only. It should not be relied upon without tax advice on its contents. Should you require further information on any of the discussions above, please feel free to reach out to Patrick Murimi.**

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